

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DONALD RAY MCCUNE,

Plaintiff,

vs.

BRIAN SANDOVAL, et al.,

Defendants.

Case No. 3:12-CV-00257-RCJ-(WGC)

ORDER

Plaintiff, who is a prisoner in custody at the Lovelock Correctional Center, has submitted an application to proceed in forma pauperis (#1) and a civil rights complaint pursuant to 42 U.S.C. § 1983. The court finds that plaintiff is unable to pay an initial partial filing fee. 28 U.S.C. § 1915(b)(4). However, plaintiff must pay the filing fee in full through monthly installments. 28 U.S.C. § 1915(b)(2).

The court has reviewed the complaint, and the court will dismiss this action. When a “prisoner seeks redress from a governmental entity or officer or employee of a governmental entity,” the court must “identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or (2) seeks monetary relief from a defendant who is immune from such relief.” 28 U.S.C. § 1915A(b). Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint for failure to state a claim upon which relief can be granted. Allegations of a pro se complainant are held to less stringent standards than formal pleadings drafted by lawyers. Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam).

1 Pursuant to a plea agreement, plaintiff was convicted in state court of lewdness with a child
2 under the age of 14 years. He alleges that he was born mentally retarded and that he had been found
3 not guilty by reason of insanity of similar crimes in other states. He also alleges that should not
4 have been found competent to stand trial and that he was unable to speak at his sentencing because
5 of his mental condition. He asks this court to issue a permanent injunction regarding his findings of
6 insanity, which would make the judgment of conviction and his imprisonment invalid. "[W]hen a
7 state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he
8 seeks is a determination that he is entitled to immediate release or a speedier release from that
9 imprisonment, his sole federal remedy is a writ of habeas corpus." Preiser v. Rodriguez, 411 U.S.
10 475, 500 (1973). Plaintiff has failed to state a claim upon which relief can be granted.

11 Also before the court are a motion for appointment of counsel and a motion by inmate
12 Steven Braunstein to act as plaintiff's next friend. Both of these motions are moot because the court
13 is dismissing the action. Furthermore, Braunstein is not an attorney, and he has no authority to
14 represent anyone other than himself. Russell v. United States, 308 F.2d 78, 79 (9th Cir. 1962). See
15 also McShane v. United States, 366 F.2d 286, 288 (9th Cir. 1966).

16 IT IS THEREFORE ORDERED that plaintiff's application to proceed in forma pauperis
17 (#1) is **GRANTED**. Plaintiff shall not be required to pay an initial partial filing fee. However, even
18 if this action is dismissed, the full filing fee must still be paid pursuant to 28 U.S.C. § 1915(b)(2).

19 IT IS FURTHER ORDERED that plaintiff is permitted to maintain this action to conclusion
20 without the necessity of prepayment of any additional fees or costs or the giving of security therefor.
21 This order granting leave to proceed in forma pauperis shall not extend to the issuance of subpoenas
22 at government expense.

23 IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1915(b)(2), the Nevada
24 Department of Corrections shall pay to the Clerk of the United States District Court, District of
25 Nevada, 20% of the preceding month's deposits to plaintiff's account (inmate #64281), in the
26 months that the account exceeds \$10.00, until the full \$350 filing fee has been paid for this action.
27 The clerk shall send a copy of this order to the finance division of the clerk's office. The clerk shall
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1 also send a copy of this order to the attention of the chief of inmate services for the Nevada
2 Department of Corrections, P.O. Box 7011, Carson City, NV 89702.

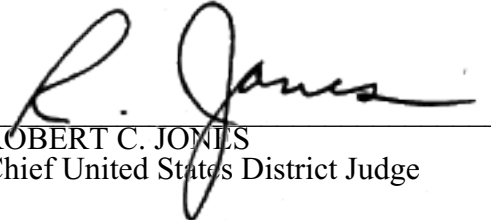
3 IT IS FURTHER ORDERED that the clerk file the complaint, the motion for leave to file
4 next-friend petition, and the motion for appointment of counsel.

5 IT IS FURTHER ORDERED that the motion for leave to file next-friend petition is
6 **DENIED** as moot.

7 IT IS FURTHER ORDERED that the motion for appointment of counsel is **DENIED** as
8 moot.

9 IT IS FURTHER ORDERED that this action is **DISMISSED** for failure to state a claim
10 upon which relief may be granted. The clerk of the court shall enter judgment accordingly.

11 Dated: June 7, 2012

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14 ROBERT C. JONES
15 Chief United States District Judge
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